

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Scott
Mr. Justice Richard J. Chartier
Mr. Justice Alan D. MacInnes

BETWEEN:	)	G. P. S. Riley ✓
	)	<i>for the Appellant</i>
)	
THE UNIVERSITY OF WINNIPEG	)	M. A. Webb
	)	<i>for the Superintendent of Pensions</i>
	)	<i>of Manitoba</i>
)	
<i>(Appellant) Appellant</i>)	
	)	A. F. Foran and
<i>- and -</i>	)	E. E. McNicol
	)	<i>for the Association of</i>
	)	<i>Employees Supporting</i>
	)	<i>Education Services</i>
THE SUPERINTENDENT OF PENSIONS)	
OF MANITOBA, ASSOCIATION OF)	
EMPLOYEES SUPPORTING	)	S. L. Carson
EDUCATION SERVICES, and	)	<i>for the University of Winnipeg</i>
UNIVERSITY OF WINNIPEG	)	<i>Faculty Association</i>
FACULTY ASSOCIATION)	
)	
	)	<i>Appeal heard:</i>
	)	January 15, 2009
)	
<i>(Respondents) Respondents</i>)	
)	
	)	<i>Judgment delivered:</i>
	)	January 23, 2009

MacINNES J.A.

1 This is an appeal by the University of Winnipeg (the U of W) from a decision of the Pension Commission of Manitoba (the Commission).

2 The essence of the appeal as argued by the U of W is that the Commission erred by failing to address the issue whether a term should be implied into the agreement reached by the stakeholders of The University of

Winnipeg Pension Plan as to distribution of a pension surplus, which agreement was approved by Resolution of the Board of Regents of the U of W.

3 While it is true that the Commission did not specifically address that issue in its decision, it is also the case that the issue was raised by the U of W only in passing at the conclusion of its written reply in the hearing before the Commission.

4 Had the issue been fully argued one would have expected the Commission to have addressed and articulated under what circumstances a term may be implied into an agreement. Having done so, the Commission would then have been expected to determine, based upon the evidence before it, whether a term may be implied here and, if so, what the implied term was. The standard of appellate review in respect to the former is that of correctness, and with respect to the latter, that of reasonableness.

5 While, for the reasons stated, the Commission did not consider the issue, I have had an opportunity to do so based upon the extensive materials filed by the parties on this appeal and the helpful arguments of counsel. Having done so, I am satisfied that this is not a case where a term ought to be implied into the agreement and/or into the resulting resolution.

6 Counsel agreed, as do I, that the remaining issues argued are all subject to the reasonableness standard of appellate review. Accordingly, the U of W has the onus of demonstrating that there is no line of analysis within the reasons of the Commission that could possibly lead it from the evidence

before it to the conclusion at which it arrived. See *Coffey v. College of Licensed Practical Nurses (Man.)*, 2008 MBCA 33, 228 Man.R. (2d) 64, leave to appeal to S.C.C. refused, [2008] S.C.C.A. No. 247.

7 This it has failed to do. Indeed, in my view, the Commission's
decision more than meets the reasonableness standard.

8 In the result, I would dismiss the appeal with costs.

9 I agree with the practical suggestion of the U of W's counsel to refer
this matter back to the Pension Plan's actuary for determination of certain
technical issues such as what amount need be paid by the U of W, the
amount of interest, and the timing of payments, etc.

10 In its decision, the Commission reserved to the panel jurisdiction with
respect to resolution of any such technical issues. The acceptance of
counsel's suggestion as aforesaid should not preclude the U of W from
returning to the Commission panel, if required, to resolve any such technical
issues.

Alan Lockman J.A.

I agree:

B. J. Scott C.J.M.

I agree:

[Signature] J.A.